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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,084	11/15/2005	Bernd Walther	VAL 203 P2	1502
34232	7590	03/02/2010	EXAMINER	
MATTHEW R. JENKINS, ESQ. 2310 FAR HILLS BUILDING DAYTON, OH 45419			GRAHAM, GARY K	
			ART UNIT	PAPER NUMBER
			3727	
			MAIL DATE	DELIVERY MODE
			03/02/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,084

**Applicant(s)**

WALTHER ET AL.

**Examiner**

Gary K. Graham

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 6, 7, 10, 11, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 10, 11, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German patent 10011842).

The patent to Ostrowski discloses the invention as is claimed, including a wiper drive comprised of a housing (8), a reversing motor (2) and a gear mechanism (3) connected to the motor. The gear mechanism has an output shaft (14) on which a swaying element (4) is mounted for driving wiper arms via wiper rods (7). The operating range of the swaying element lies within a pivoting range that is delimited by two mechanical stops (11,B). The stops are removable or movable since they are screws or bolts that are so attached to the housing. As such, it appears the stops are “designed” such that they can be removed or moved so that the swaying element when the wiper drive is mounted to a cylindrical support frame (1), can be moved from a first mounting position which lies outside the pivoting range, into the pivoting range without being obstructed by the stops. It appears nothing would stop or prohibit this functionality or assembly method of the swaying element if the stops of Ostrowski are removed.

With respect to claim 1 and the phrase “wherein when said swaying element is in said first mounting position it is outside said pivoting range, but is driven into said pivoting range after which said at least one stop may be mounted on said housing to delimit movement of which said at least one stop may be mounted on said housing to delimit movement of said swaying element from within said pivoting range to outside of said pivoting range”, such does not distinguish from Ostrowski. Such relates to the desired or intended method of assembly of the wiper drive. Note that the claims are directed to the wiper drive, and as such the particular manner of assembly does not appear of patentable significance. Such is especially true here where the particular method does not impart a structural or relationship difference in the final wiper drive assembly. Additionally, the drive of Ostrowski could be assembly in such a manner as nothing would prohibit such.

Claims 1, 2, 4, 6, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German patent 10125988).

The patent to Ostrowski discloses the invention as is claimed, including a wiper drive comprised of a housing (2), a reversing motor (not shown but disclosed) and a gear mechanism (not shown but disclosed) connected to the motor. The gear mechanism has an output shaft (3) on which a swaying element (4) is mounted for driving wiper arms via wiper rods (6) in known fashion. The operating range of the swaying element lies within a pivoting range that is delimited by two mechanical stops (7) arranged on “add-on” element (9). The stops are non-removable from the “add-on” element which is removable from the housing (2) via screws (5). As such, it appears the stops are “designed” such that they can be removed or moved so that the swaying element when the wiper drive is mounted to a cylindrical support frame (1), can be moved from a first mounting position which lies outside the pivoting range, into the pivoting range without being obstructed by

the stops. It appears nothing would stop or prohibit this functionality of the swaying element if the stops of Ostrowski are removed.

With respect to claim 1 and the phrase “wherein when said swaying element is in said first mounting position it is outside said pivoting range, but is driven into said pivoting range after which said at least one stop may be mounted on said housing to delimit movement of which said at least one stop may be mounted on said housing to delimit movement of said swaying element from within said pivoting range to outside of said pivoting range”, such does not distinguish from Ostrowski. Such relates to the desired or intended method of assembly of the wiper drive. Note that the claims are directed to the wiper drive, and as such the particular manner of assembly does not appear of patentable significance. Such is especially true here where the particular method does not impart a structural or relationship difference in the final wiper drive assembly. Additionally, the drive of Ostrowski could be assembly in such a manner as nothing would prohibit such.

With respect to claim 4, it appears the “add-on” element of Ostrowski is suitable for exerting a retaining function as such defines no particular structure for the add-on element. At least none not disclosed by Ostrowski. Further, note that the support frame does not appear to be claimed.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10011842.

The patent to Ostrowski '842 discloses all of the above recited subject matter with the exception of the support frame being in tubular form.

While Ostrowski does not discuss the cylindrical support frame (1) being tubular, to make such so would have been entirely obvious to one of ordinary skill in the art. Making of components as tubular is extremely well known in the mechanical arts to provide material savings over solid cross-section. It would have been obvious to one of skill in the art to make the support frame of Ostrowski as tubular, as is well established in the mechanical arts, to provide the predictable result of reduced component weight.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10125988).

The patent to Ostrowski '988 discloses all of the above recited subject matter with the exception of the add-on element being of sheet metal and the support frame being tubular.

While Ostrowski does not specify the material for the add-on element (9), to make such of sheet metal would have been obvious. Use of sheet metal is well established in the automotive industry. Sheet metal is a durable and inexpensive material. It would have been obvious to one of skill in the art to make the add-on element of Ostrowski of sheet metal, as a mere choice of materials, to provide such as an inexpensive, durable component.

Also, while Ostrowski does not discuss the cylindrical support frame (1) being tubular, to make such so would have been entirely obvious to one of ordinary skill in the art. Making of components as tubular is extremely well known in the mechanical arts to provide material savings over solid cross-section. It would have been obvious to one of skill in the art to make the support frame of Ostrowski as tubular, as is well established in the mechanical arts, to provide the predictable result of reduced component weight.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10011842) in view of Armbruster et al (German patent 2636419).

The patent to Ostrowski '842 discloses all of the above recited subject matter with the exception of setting forth that the swaying element is non-releasably fixed to the output shaft.

The patent to Armbruster discloses a windshield wiper assembly wherein support shaft (11) is non-releasably joined, via welding (19), with swaying element (16).

While Ostrowski does not specify the particular connection between the swaying element and the shaft it is mounted on he does appear to show both a releasable connection (fig.1) and non-releasable connection (fig.2). However, to non-releasably connect such would have been obvious to one of skill in the art. Both releasable and non-releasable connections between cranks and shafts is notoriously well known in the windshield wiper arts. Such is based more on the particular assembly/disassembly requirements and desires than on any inventive concept. Further, Armbruster clearly sets forth the locking or non-releasably joining of a crank with its supporting shaft.

It would have been obvious to one of skill in the art to make the connection between the swaying element and the output shaft of Ostrowski as non-releasable, as is well known and as set forth by Armbruster, to provide the predictable prevention of inadvertent separation between the swaying element and shaft.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10125988) in view of Armbruster et al (German patent 2636419).

The patent to Ostrowski '988 discloses all of the above recited subject matter with the exception of setting forth that the swaying element is non-releasably fixed to the output shaft.

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It would have been obvious to one of skill in the art to make the connection between the swaying element and the output shaft of Ostrowski as non-releasable, as is well known and as set forth by Armbruster, to provide the predictable prevention of inadvertent separation between the swaying element and shaft.

### ***Response to Arguments***

Applicant's request for an interview is noted. However, to advance prosecution, an action follows. Applicant may contact the examiner at the below listed number at his convenience.

Initially, with respect to applicant's discussion of a preliminary amendment, it is presumed applicant is referencing the 08 June 2005 preliminary amendment. It appears such amendment was incorporated into the claims of the published application. Applicant is queried as to which particular changes were not incorporated into the claims or if applicant is referencing another, different preliminary amendment. It should be noted that the examiner acted on the set of claims filed in the 08 June 2005 preliminary amendment in the action mailed 10 September 2009. Clarification is requested.

Applicant's request for rejoinder of non-elected species claims if a generic claim is held allowable is noted. As set forth in the restriction requirement, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Applicant's arguments filed 02 December 2009 have been fully considered but they are not persuasive.

Applicant's argument that the swaying arm of Ostrowski '842 cannot start outside the pivoting zone because of angled surfaces SI and SII (as labeled by applicant) is noted but not persuasive. Even assuming, *arguendo*, that the surface SII would be contacted by the swaying arm, such is still outside of the pivoting range and below the stops (11,B) as can be seen in figure 1 of Ostrowski. Thus, if the stops of Ostrowski were removed, the swaying arm could be positioned outside of the pivoting range, at least to some degree, initially where the stops are to be located. Also, and more importantly, whether or not the swaying arm is initially outside the pivoting range is not of particular patentable significance in the instant wiper drive claims. Such relates to the particular manner or method of assembly of the wiper drive. The final result is the swaying arm lies in the pivoting range defined by the stops. Ostrowski discloses this structure. As far as can be determined, the surface SII identified by applicant could have arrived at this orientation, bent relative to surface SI, after assembly of the swaying element and stops. Again, such relates to the particular method of assembly and does not act to distinguish from Ostrowski.

Applicant further argues that “In no reasonable interpretation of Ostrowski does it appear that the swaying element 4 starts outside the pivoting range, moves into the pivoting range and then becomes delimited by at least one stop after its movement into the pivoting range”. While the examiner agrees with such a statement, it is not persuasive in distinguishing from Ostrowski. As set forth above, such relates to the method of assembling the wiper drive and imparts no particular structure to the drive that is not disclosed by Ostrowski. It does not appear of patentable significance in the instant product claims whether or not Ostrowski is made by the same method. It should be noted that the wiper drive is not limited to the particular method of assembly recited but only to the structure implied by the method. The method results in the swaying element residing in the pivoting range, not outside such range, which Ostrowski discloses.

Applicant’s arguments with respect to the Ostrowski ‘988 patent are noted but not persuasive. Again, applicant is relying on a particular method of assembly to distinguish from this Ostrowski reference. As set forth above, the method of assembly, does not act to distinguish from the Ostrowski reference. Ostrowski discloses the claimed final structure. Applicant argues that it would be difficult if not impossible to mount the screws 5 of Ostrowski if the arm were outside the pivoting range. While such may or may not be true, the degree of difficulty in any particular method of assembly of components does not impart patentability to the claims set forth by applicant. Also, it should be pointed out that applicant’s claims call for the swaying element to be moved into the pivoting range, after which the stop may be mounted. Thus, in Ostrowski ‘988, the screws would not have to be mounted when the arm is outside the pivoting range, but would be mounted after the arm is in the pivoting range as claimed.

Applicant's argument with respect to claim 4 is noted but not persuasive. While applicant argues that the add-on element performs a dual function, the claim is limited to the add-on element being suitable for exerting a retaining function. No particular relationship between the add-on element and the support frame is claimed. As set forth above, the add-on element of Ostrowski appears as "suitable" for exerting a retaining function, at least as far as such defines any particular relationship or structure.

Applicant's discussion of claim 7 is noted. However, such does not appear to differ from the arguments addressed above.

Applicant's discussion of claim 17 and the rejection thereof is noted. Applicant argues that there is no motivation to provide the welding of the swaying element to the output shaft, which would increase the assembly time and perhaps the overall expense of the wiper system of Ostrowski. Such is not persuasive. As set forth above, Armbruster clearly discloses the non-releasable connection of swaying elements with pivotal shafts. Such could readily be incorporated into Ostrowski to yield the entirely predictable result of reduction in inadvertent or undesired separation of the swaying element from the output shaft. It is noted that applicant has not addressed this particular motivation that has been previously set forth.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/  
Primary Examiner, Art Unit 3727

GKG  
22 February 2010